of receiving as evidence, the accounts of a deceased person charging himself with the receipt of money. *Barry* v. *Bebbington,* 4 T. R. 514. Declarations in disparagement of one's proprietary title were also admitted. *Davis* v. *Price,* 2 T. R. 53; *Doe* v. *Jones,* 1 Camp. 367. Later it seemed to be admitted as a general principle, that all declarations against interest by a party since deceased were admissible. *Higham* v. *Ridgway,* 10 East 109; *Middleton* v. *Melton,* 10 B. & C. 317. But in the *Sussex Peerage Case,* 11 Cl. & F. 85, an arbitrary limit was placed on the principle, confining it to statements against pecuniary or proprietary interest. The rule laid down in this case is followed in England. *Davis* v. *Lloyd,* 1 C. & K. 275; *Papendick* v. *Bridgwater,* 5 E. & B. 166.

The great weight of authority in the United States follows the English doctrine confining the exception to statements of facts against pecuniary or proprietary interest excluding those involving a penal liability. *State* v. *May,* 15 N. C. 328; *Snow* v. *State,* 58 Ala. 372; *Davis* v. *Commonwealth,* 95 Ky. 19, 23 S. W. 585, 44 Am. St. Rep. 201; *People* v. *Hall,* 94 Cal. 595, 30 Pac. 7. There is some authority to the contrary, holding that statements involving a penal liability made against interest may be admitted. *Coleman* v. *Frazier,* 4 Rich. L. (S. C.) 152.

No logical reason for the limitation established in the Sussex Peerage Case, *supra,* can be adduced, nor do the cases supporting the doctrine attempt to do so. It does not seem a logical distinction to differentiate statements against pecuniary interest and those subjecting the party making them if true to a penal liability. A man is as little likely to subject himself to penal as to pecuniary liability; and this is the philosophy on which this exception to the hearsay rule is based. The case of *Commonwealth* v. *Chabbock,* 1 Mass. 143, seems responsible for the establishment of the rule in the United States and an examination of this case shows little to commend it. The facts fail to show that the witness was unavailable by reason of death or other condition prohibiting his appearance in court, nor is any reason given, nor authority cited in the very short opinion.

It would seem that the Supreme Court of the United States in establishing the doctrine for the first time, in *Donelly* v. *United States, supra,* has overlooked an opportunity to rectify an illogical rule established by the English courts, although unquestionably it follows the weight of authority as established by the courts of the different states. In 2 WIGMORE EV., §§ 1476, 1477, is found an able criticism of the doctrine.

FRATERNAL BENEFIT SOCIETIES—KILLING OF INSURED BY INSANE BENEFICIARY.—The beneficiary and the insured were husband and wife. The husband, while insane, inflicted wounds upon the body of the wife, which caused her death, and then killed himself. No evidence was adduced as to which died first. Insurers refused payment on the grounds that the insane beneficiary's act avoided the policy under the terms of the following exception: "Murdered by Beneficiary.—If the member to whom this certificate shall be issued shall be murdered by any beneficiary named herein, or who may claim benefits hereunder,

or should any beneficiary named in this certificate, or who may claim benefits hereunder, cause the death of any such member directly or indirectly, intentionally or accidentally, then any benefits which such beneficiary might otherwise have received under the provisions of this certificate shall revert to the Grand Circle." *Held,* policy is avoided; *Grand Circle, etc.,* v. *Rausch* (Colo.), 134 Pac. 141.

The agreed statement of facts sufficiently shows that the insane beneficiary neither murdered the insured nor caused her death either indirectly or intentionally. The court cites several cases in support of the view that he caused his wife's death accidentally. But none of these are in point. In one of them an instruction, which stated in part that homicide by one acting under an insane impulse was unintentional on his part "and accidental in that respect, within the meaning of said policy," was held to state an unsound proposition of law. *Marceau* v. *Trav. Ins. Co.,* 101 Cal. 346, 35 Pac. 856. The only grounds upon which this clause could work an avoidance would be that the insane beneficiary directly caused the death of the insured.

Forfeitures are not favored in law. Such an interpretation will not be put upon a contract unless the terms thereof expressly require it. *Warwick* v. *Sup. Con., etc.,* 107 Ga. 115, 32 S. E. 951. In the principal case the court endeavors to sustain the forfeiture on the grounds of public policy. When a sane beneficiary feloniously causes the death of the insured this rightly avoids the policy for any other rule would furnish a most potent incentive to crime. *Schmidt* v. *N. L. Assn.,* 112 Ia. 41, 83 N. W. 800, 51 L. R. A. 141. But how could public policy be contravened in the case of one *non compos mentis.* An insane person can not consciously and intentionally cause the death of another for the purpose of profiting thereby. It is to deter others by removing the incentive that public policy avoids the contract in the case of homicide by a sane beneficiary. *N. Y. Mut.* v. *Armstrong,* 117 U. S. 591; *Schmidt* v. *N. L. Assn., supra.*

It is a settled rule for the construction of insurance policies, and a rule which applies with added weight to cases of mutual benefit certificates, that the court will bear in mind the character and purpose of the contract in general and the disputed clause in particular. 1 COOLEY, INSURANCE, 632, 633, 636; *Henton* v. *Farmers, etc., Co.,* 1 Neb. (Unof.) 425, 95 N. W. 670. It is submitted, therefore, that it would be more in accord with the principles and precedents of insurance law to hold that such a clause, as appears in the principal case, inserted for the obvious purpose of preventing a beneficiary from profiting by his intentional and felonious act, should not be construed to bar all recovery on the policy where the death of the insured was caused by the act of an insane beneficiary, even though the literal wording of the clause in question might be held to cover such a case.

Stipulations analogous to the one in question, excepting death by suicide, must be in the clearest possible terms or the courts will hold that suicide committed by an insane insured is not within the meaning of the exception. 4 COOLEY, INSURANCE, 3244, et seq. This tendency on the part of the courts has caused the insertion of such clear phrases

as "sane or insane." But unless the exceptions are so clear that no other reasonable interpretation can be put upon them, suicide while insane will not avoid the policy. So here, the act of one *non compos mentis,* which would have been murder had he been sane, should not be permitted to avoid the policy unless the terms of the exception unmistakably include this among the excepted risks, which is not the case. It is submitted that the provision here is not so unequivocal as to compel the decision that the policy is avoided. Where two interpretations, equally reasonable, are possible, that construction should be adopted which will enable the beneficiary to recover. *Wallace* v. *German Am. Ins. Co.,* 41 Fed. 742; *Grand Legion, etc.,* v. *Beaty,* 224 Ill. 346, 8 A. & E. Ann. Cas. 160.

Even where the death of the insured is intentionally caused by a sane beneficiary the insurer's liability ordinarily is not absolutely terminated thereby; but the policy will be enforced for the benefit of the insured's estate. 4 COOLEY, INSURANCE, 3154; *Sup. Lodge, etc.,* v. *Menkhausen,* 209 Ill. 277, 70 N. E. 567, 65 L. R. A. 508, 101 Am. St. Rep. 239. *A fortiori* in this case where the death was unintentional the heirs of the insured should recover.

Moreover, when the claimant has shown the execution of the contract, loss within its general terms and the requisite notice, the burden is then on the insurer to prove that the loss or a part thereof is within the terms of some exception stated in the policy. *German Am. Ins. Co.* v. *Hyman,* 42 Colo. 156, 94 Pac. 27, 16 L. R. A. (N. S.) 77. In the principal case, this rule requires the company to prove that the insured died first; for, under the terms of this clause, the company gets only those "benefits which such beneficiary might have otherwise received under the terms of this certificate." This the company did not do. Thus it failed to sustain its burden; and, therefore, should have been held liable.

FRAUD—MEASURE OF DAMAGES.—Plaintiff was defrauded in an exchange of real estate by false representations of quality and location of land. *Held,* the measure of damages is the difference in value between the property parted with by plaintiff and that which he received. *Sanders* v. *Dunn* (Tex.), 158 S. W. 1041.

This case follows a former Texas holding. *George* v. *Hesse,* 100 Tex. 44, 93 S. W. 107, 8 L. R. A. (N. S.) 804 (note), 132 Am. St. Rep. 772 (note), 15 Ann. Cas. 456 (note). It is the minority view but is supported by some of the best reasoned cases. *Sigafus* v. *Porter,* 179 U. S. 116. It is also applied to personalty. *Smith* v. *Bolles,* 132 U. S. 125. But the majority view is *contra,* giving the plaintiff the benefit of his bargain and allowing speculative losses, the damages being the difference between the actual value of the property acquired and what it would be worth if as represented. *Gustafson* v. *Rustemeyer,* 70 Conn. 125, 39 Atl. 104, 66 Am. St. Rep. 92, 39 L. R. A. 644. When there is a total failure of title, the courts agree that the measure of damages is the purchase price. *Reynolds* v. *Franklin,* 44 Minn. 30, 46 N. W. 139, 20 Am. St. Rep. 540. But when there are misrepresentations as to title, and a partial failure thereof, or misrepresentations as to encumbrances, to quantity or